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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,676	07/23/2003	Robert A. Benson	705658US1	1092

24938 7590 05/26/2005

DAIMLERCHRYSLER INTELLECTUAL CAPITAL CORPORATION  
CIMS 483-02-19  
800 CHRYSLER DR EAST  
AUBURN HILLS, MI 48326-2757

EXAMINER

BINDA, GREGORY JOHN

ART UNIT PAPER NUMBER

3679

DATE MAILED: 05/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/625,676

Applicant(s)

BENSON ET AL.

Examiner

Greg Binda

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 7 and 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/23/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

*Election/Restrictions*

1. Applicant's election without traverse of Species I shown in Figs. 1-3 in the reply filed on April 26, 2005 is acknowledged.

2. Claims 7 & 8 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 26, 2005.

*Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Orain, US 3,817,057. Fig. 1 shows a universal joint assembly having a housing 21 and a universal joint (see "universal joints" at col. 1, line 6) in a chamber within the housing, the improvement comprising: a flexible diaphragm seal 20 in the housing forming a wall of the chamber. Fig. 1 shows the diaphragm seal includes a plurality of concentric, U-shaped, circular portions and that some of the circular portions open toward the chamber and the remaining circular portions open

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away from the chamber. Fig. 1 shows the diaphragm seal 20 separates the chamber from a vent space, and further including a vent hole 27 from the vent space. In col. 2, lines 38 & 39, Orain discloses that the diaphragm seal is made from a sinuous sheet of elastomeric material (see “elastomer reinforced with cloth”).

5. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Donnell, US 2,354,961. Fig. 1 shows a universal joint assembly having a housing 15 and a universal joint (see “means to obtain universal action” at page 1, col. 2, line 24) in a chamber within the housing, the improvement comprising: a flexible diaphragm seal 27 in the housing forming a wall of the chamber. Fig. 1 shows the diaphragm seal includes a flexible sheet having a plurality of concentric, U-shaped, circular portions and that some of the circular portions open toward the chamber and the remaining circular portions open away from the chamber. Fig. 1 shows the diaphragm seal 27 separates the chamber from a vent space (with the element 12), and further including a vent hole (see the unnumbered hole in the element 12 that is just to the right of the numeral 27) from the vent space.

6. Claims 1, 3 & 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Alden, US 2,362,456. Fig. 1 shows a universal joint assembly having a housing 10 and a universal joint 12 in a chamber within the housing, the improvement comprising: a flexible diaphragm seal 26 in the housing forming a wall of the chamber. Fig. 4 shows the diaphragm seal includes a flexible sheet having a plurality of concentric, U-shaped, circular portions (indicated by numerals 48 &

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51-53) and that the circular portions indicated by numerals 51 & 52 open toward the chamber and the remaining circular portions indicated by numerals 48 & 53 open away from the chamber.

7. Claims 1, 3 & 4 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by any one of Krude et al, US 4,262,498; Reilly, US 3,149,883 and Brabant, US 781,180.

8. Claims 1 & 3 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Fisher et al, US 3,858,412.

9. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Miller et al, US 6,540,616.

#### *Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pickens shows a diaphragm seal B forming the wall of housing.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Binda whose telephone number is (571) 272-7077. The examiner can normally be reached on M-F 9:30 am to 7:00 pm with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Greg Binda  
Primary Examiner  
Art Unit 3679